



March 4, 1999

Mr. Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR99-0603

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests (Nos. 4603 and 4604) were assigned ID# 123190 and ID # 123192.

The City of Coppel (the "city") received two requests for information relating to four offense reports. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The city received the requestor's written response for information on December 16, 1998. You argue that "due to the holiday schedule," the request for an opinion is timely made. You submit an affidavit from the Deputy City Manager which attests that the city's offices were closed on December 24 and 25, 1998 and January 1, 1999. Thus, the ten-day deadline was January 4, 1999. You did not request a decision from this office until January 8, 1999, more than ten business days after the requestor's written request. As justification for the untimeliness of the request for a ruling, you provided us with a letter from the City Manager which shows that he extended the deadline to January 11, 1999. The ten-day deadline is a statutorily imposed deadline.

Gov't Code § 552.301. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The City Manager cannot set aside a statutory mandate and unilaterally extend the deadline. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). Because section 552.108 is designed to protect a governmental body's interest, we conclude that the city has waived the exception as to the submitted information as a result of its untimely submission of a request for an opinion from this office. *See generally* Open Records Decision Nos. 630 (1994) (demonstration of applicability of section 552.107(1) does not constitute compelling reason to overcome presumption of openness).

However, the submitted information contains information made confidential by law. First, you must withhold information under section 552.130 of the Government Code. Section 552.130 excepts information relating to a driver's license issued by an agency of this state. We have marked the information you must withhold under section 552.130.

Second, the submitted information contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential

under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

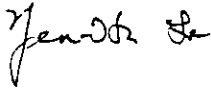
Lastly, the submitted information includes criminal history record information ("CHRI"). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.¹

¹We note that the person who is the subject of the CHRI may obtain the information from DPS. Gov't Code § 411.083(b)(3) (DPS shall grant access to CHRI to person who is subject of CHRI).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 123190 and ID# 123192

Enclosures: Marked documents

cc: Mr. Ed Caldwell
601 Shadowcrest
Coppell, Texas 75019
(w/o enclosures)